

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

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In re:

Yvonne Kinton Breeze

Bankruptcy Case No.: 08-80108

Soc. Sec. No. xxx-xx-3350

Mailing Address: 4018 Sudbury Road, , Durham,  
NC 27704-

Debtor.

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Yvonne Kinton Breeze

Plaintiff, A.P. No.: \_\_\_\_\_

Citifinancial Mortgage Company LLC,

Defendant.

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COMPLAINT TO VALUE COLLATERAL

The Plaintiff, above-named, respectfully alleges as follows:

1. That this matter is a core proceeding pursuant to 28 U.S.C. Section 157, and that the court has jurisdiction pursuant to 28 U.S.A. Sections 151, 157 and 1334.
2. This Complaint was filed, pursuant to 11 U.S.C. 506, and in accordance with Bankruptcy Rule 7001, to value their residence for the purpose of determining the secured status of the mortgage claim held by Citifinancial Mortgage Company LLC.
3. The Plaintiff is filed this bankruptcy case on January 29, 2008 seeking protection under Chapter 13 of Title 11 of the United States Code.
4. The Defendant Citifinancial Mortgage Company LLC is a corporation and/or a partnership with an office and principal place of business located at Post Office Box 140609, , Irving, TX 75014-0000 and/or Post Office Box 14299, , Irving, TX 75014-2199 .This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. Section 157 and 1334 and 11 U.S.C. Section 506.
5. The Plaintiff owns real property located at 4018 Sudbury Road Durham NC 27704. The legal description of the property is as follows:

BEING ALL OF LOT 80 OF STRATTON PARK, PHASES 2 AND 3, AS PER PLAT AND SURVEY THEREOF NOW ON FILE IN THE OFFICE OF THE REGISTER OF DEEDS OF DURHAM COUNTY IN PLAT BOOK 131, PAGE 18, TO WHICH PLAT REFERENCE IS HERBY MADE FOR A MORE PARTICULAR DESCRIPTION OF SAME.

The tax map or parcel ID No. is: 172162

6. Citifinancial Mortgage Company holds a first Deed of Trust on such property with an payoff balance, as of the date this case was filed in the amount of approximately \$87,505.00. This Deed of Trust originally given to and held by Decision One Mortgage Company. This Deed of Trust was recorded on 11/7/06 in Book 5411 at Page 632, Durham County Registry of Deeds.

7. Citifinancial Mortgage Company LLC holds a second Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$22,116.00. This Deed of Trust originally given to and held by Decision One Mortgage Company. This Deed of Trust was recorded on 11/7/06 in Book 5411 at Page 645, Durham County Registry of Deeds.
8. The fair market value of the said property is not greater than \$84,500.00.
9. Pursuant to 11 U.S.C. 506 of the Bankruptcy Code and In re: Kidd, 161 B.R. 769 (Bankr. E.D.N.C. 1993), the loan with Citifinancial Mortgage Company LLC, secured by a second Deed of Trust against the Plaintiff's said property, is an unsecured claim. In turn, pursuant to 11 U.S.C. 506(d), the lien securing said loan is void.

WHEREFORE, the Plaintiff prays the Court find that said claim held by Citifinancial Mortgage Company LLC, which is secured by a second Deed of Trust upon said property, to be wholly unsecured, and that said claim should therefore be classified an unsecured claim for the purpose of this Chapter 13 case. The Plaintiff further prays that the Court order Citifinancial Mortgage Company LLC to cancel the said Deed of Trust forthwith upon the completion of the Plaintiff's Chapter 13 plan and the granting of the Plaintiff's discharge, that the attorney for the Plaintiff be awarded \$350.00 to be paid through the Plaintiff's plan as an administrative priority claim, and that the Court grant such other and further relief as to the Court seems just and proper.

Dated: August 31, 2009

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz

Edward Boltz

Attorney for the Plaintiff

North Carolina State Bar No.: 23003

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